

VZCZCXRO2984  
RR RUEHFL RUEHKW RUEHLA RUEHROV RUEHSR  
DE RUEHVJ #1127/01 1911525  
ZNY CCCCC ZZH  
R 091525Z JUL 08  
FM AMEMBASSY SARAJEVO  
TO RUEHC/SECSTATE WASHDC 8631  
INFO RUEHZL/EUROPEAN POLITICAL COLLECTIVE  
RUFOAOA/USNIC SARAJEVO BK  
RUEKJCS/SECDEF WASHINGTON DC  
RUEKJCS/SECDEF WASHDC  
RUEKJCS/JCS WASHINGTON DC  
RHEHNSC/NSC WASHDC  
RHEFDIA/DIA WASHINGTON DC  
RUEAIIA/CIA WASHINGTON DC  
RUEATRS/DEPT OF TREASURY WASHDC

C O N F I D E N T I A L SECTION 01 OF 02 SARAJEVO 001127

SIPDIS

EUR/SCE (FOOKS), TREASURY FOR LINDQUIST

E.O. 12958: DECL: 07/08/2018

TAGS: [ECON](#) [EFIN](#) [PGOV](#) [BK](#)

SUBJECT: BOSNIA:CONSTITUTIONAL COURT IGNORES POTENTIALLY  
UNCONSTITUTIONAL RS BOND ISSUANCE

REF: A. SARAJEVO 411

[1](#)B. SARAJEVO 570

[1](#)C. SARAJEVO 152

Classified By: A/DCM Michael Murphy for reasons 1.4 (b) and (d).

[1](#)1. (C) SUMMARY: The BiH Constitutional Court (CC) continues to refuse to rule on two critical petitions challenging the constitutionality of the Republika Srpska (RS) Law on Frozen Foreign Currency Accounts (FFCA). The RS law allowed for the issuance of bonds to repay frozen foreign currency account holders in the RS in February 2008 (Ref A). The CC ruled in 2005 that old foreign currency accounts fell within the exclusive competence of the state. Outside observers, including members of the international community, increasingly speculate that the CC,s failure to rule is the result of political pressure from the RS. The CC issued a narrow, technical ruling on the FFCA issue in June, but it did not address the constitutionality of the RS government,s actions. OHR experts speculated that CC issued its technical ruling in order &to appear engaged& and to deflect pressure from the international community and others. The longer the CC takes to rule on the issue, the harder it will be to roll back the RS bond issuance and replace it with a state bond issue. If that is the case, then RS Prime Minister (PM) Dodik and his government will have successfully reclaimed a state-level competency. This episode has also exposed what some consider growing problems with the CC, which suggest that the fragile foundations of another state institution are cracking. END SUMMARY

Constitutional Court Postpones Currency Decision (Again)

[1](#)2. (C) The BiH Constitutional Court (CC) failed to place on its June or July plenary session agendas two petitions regarding the constitutionality of the December 2007 RS Law on Frozen Foreign Currency Accounts (FFCA). The two petitions, one co-drafted by Presidents Silajdzic and Komsic (the Bosniak and Croat members of the Tri-Presidency respectively), and one from SDA president Sulejman Tihic (authored by the Office of the High Representative - OHR), question the constitutionality of the law, which authorized the RS to issue frozen foreign currency bonds to RS residents whose accounts were expropriated during the war. The CC also failed again to consider both petitions, request for &interim measures& to put the bond issuance on hold until the CC could issue a final ruling on one or both petitions. The Silajdzic/Komsic and Tihic petitions argued that interim measures were necessary to prevent irreparable harm to the

state, protect holders of frozen foreign savings in the Federation and Brcko, and protect third party purchasers of RS bonds that might subsequently be declared illegal. The RS began issuing bonds on February 28, 2008. RS account holders will receive their first payments on August 28. (Note: Not long after the Silajdzic/Komsic and Tihic petitions were filed, the Serb Member of the Tri-Presidency Radmanovic filed his own petition challenging the constitutionality of the state-level law. End Note)

#### Growing Concerns About Politics and the Court

-----

13. (C) The 2007 RS law and subsequent issuance of RS bonds was a clear challenge to a December 2005 Constitutional Court decision, which ruled that old foreign currency accounts fell within the exclusive competence of the state and held the state responsible for enacting a legislative framework for resolving the issue of old foreign currency savings in a unified manner for all citizens of Bosnia and Herzegovina.<sup>8</sup> In April 2006, the state parliament adopted a Law on the Settlement of Liabilities for Frozen Foreign Currency Accounts (aka the Settlement Law), which, among other things, set a March 31, 2008 deadline for the state to issue bonds. OHR and others within the international community (IC) believe that the RS bond issuance was illegal and unconstitutional, and has quietly urged the CC to consider the petitions and issue a decision. Concerns within OHR and the IC over the CC's failure to consider the issue are growing, including speculation that RS officials have actively pressured some within the CC to repeatedly postpone

SARAJEVO 00001127 002 OF 002

its consideration of the Silajdzic/Komsic and Tihic petitions.

#### The Court's Attempt to Appear Active

-----

14. (C) In contrast to its failure to act on the request for interim measures, let alone rule on the Silajdzic/Komsic or Tihic petition, the CC did consider a petition at its June session from the state-level Deputy Minister for Finance and Treasury Kasumovic, asking the CC to determine whether the RS actions on frozen foreign currencies were in compliance with the two rulings issued by the Human Rights Commission (HRC) in 2005. It was these rulings that ultimately led to the CC's December 2005 ruling that frozen foreign currency issues were a state-level competency. The CC issued a narrow, technical ruling that it lacked the jurisdiction to consider the Kasumovic petition because the HRC rulings it had been asked to consider had been superseded by subsequent CC rulings and the state-level Settlement Law. OHR legal experts told us that they were not surprised by the CC's ruling on the Kasumovic petition, which they indicated had been filed prior to the far more important Silajdzic/Komsic and Tihic petitions. They believe that the CC's decision to ignore the latter and rule instead on Kasumovic was designed to allow the CC to argue that it was addressing the frozen foreign currency issue even as it avoided ruling on the critical constitutional issues at stake.

#### Comment

-----

15. (C) The two petitions regarding the constitutionality of the RS law remain in play, and the IC continues to urge they be placed on the agenda for the next CC session (dates as yet unknown). Unfortunately, the longer the CC refuses to either issue interim measures or rule on the Silajdzic/Komsic and Tihic petitions, the harder it will be to roll back the RS bond issuance if it is in fact ruled unconstitutional. As one expert put it to us, with RS bond holders scheduled to receive their first payments in August, it will soon become an almost practical impossibility<sup>8</sup> to ensure that there is a single, country-wide, and unified settlement of frozen

foreign currency issues. If that is the case, then RS PM Dodik and his government will have successfully reclaimed a state-level competency. It would constitute another victory in Dodik's battle to undermine state institutions and a huge blow to the rule of law which we have worked so hard to build in Bosnia.

16. (C) This episode has also exposed what some consider growing problems with the CC. The CC has been seen as a body committed to protecting the state's interests as well as the interests of all Bosnia's citizens. Many outsiders attribute its failure to rule on the constitutionality of the RS bond issuance to political pressure from the RS. In addition, the CC's decisions are supposed to be ethnically neutral and by majority vote. In fact, the CC is the only state-level body that does not have an ethnic quota system built into its decision-making processes. Nonetheless, we were told that a CC panel of judges declined to a rule on possible interim measures earlier in the year, because a judge from the RS blocked consensus. If true, this is yet another disturbing sign that the fragile foundations of the Bosnian state and its institutions are cracking.

ENGLISH